

# STATE OF MONTANA TERM CONTRACT

Department of Administration  
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**T.C. #: SPB10-1923D**

**Title: Transaction Funded Electronic Government Services**

**This is an exclusive contract.**

CONTRACT TERM	FROM	January 1, 2011	CONTRACT STATUS	NEW (XX)
	TO	December 31, 2015		RENEW ( )
VENDOR ADDRESS	Montana Interactive 101 North Rodney, Suite 3 Helena, MT 59601		ORDER ADDRESS	
ATTN:	Sandi Miller		ATTN:	
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PRICES: Per Contract

DELIVERY: Per Contract

F.O.B.: Per Contract

TERMS: Per Contract

REMARKS: This contract is for the convenience of state agencies and is a "Non-exclusive" use contract for the development of eGovernment services. (See Section 3 for details).

This contract is exclusive for the State Electronic Payment Processing Portal and ePass Montana. For these two items, this contract is an "Exclusive" use contract. (See Section 3 for details).

IFB/RFP No.: RFP10-1923D

DEVIN GARRITY, CONTRACTS OFFICER

DATE:

**AUTHORIZED SIGNATURE**

**Transaction Funded Electronic Government Services Contract**  
**CONTRACT #10-1923D**

**1. PARTIES**

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, (hereinafter referred to as "the State"), whose address and phone number are Information Technology Services Division, PO Box 200113, Helena, MT, 59620, 406-444-2700, and Montana Interactive, (hereinafter referred to as the "Contractor"), whose address and phone number are 101 North Rodney Suite 3, Helena, MT 59601 and 406-449-3468.

**THE PARTIES AGREE AS FOLLOWS:**

**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

**2.1 Contract Term.** This contract shall take effect on January 1, 2011, and terminate on December 31, 2015, unless terminated earlier in accordance with the terms of this contract.

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties at least 90 days prior to the end of the initial term or any renewal term and according to the terms of the contract be renewed in one-year intervals, or any interval between one and five years that is advantageous to the State. This contract, including any renewals, may not exceed a total of 10 years, at the option of the State.

**3. EXCLUSIVITY**

**3.1 Non-Exclusivity.** This contract is for the convenience of state agencies and is a "Non-exclusive" use contract for the development of eGovernment services. Therefore, agencies may obtain development of eGovernment services from sources other than the Contractor as long as they comply with Title 18, MCA, and their delegation agreement.

**3.2 Exclusivity.** This contract is exclusive for the State Electronic Payment Processing Portal and ePass Montana. For these two items, this contract is an "Exclusive" use contract and state agencies must obtain the specified product/service from Contractor. It is the individual agency's responsibility to comply with the terms of the contract. Exceptions may only be granted by the State Chief Information Officer.

**4. WORK ORDER PROCEDURE**

**4.1 Requirements.** All new eGovernment service projects and application development work conducted by Contractor under this contract must be done based on approved work orders. Work orders are also required for using existing statewide services. Major enhancements for existing eGovernment services must first have an amended work order. Any change that affects fees must first have an amended work order. The work order may be transaction funded (self-funded) or agency funded (time and materials); the majority of work orders shall be transaction funded. Work cannot commence until the work order is signed by all parties.

**4.2 Contents.** The work order at a minimum includes the description of work, development schedule, deliverables, fees (if applicable), payment schedule (if applicable), project managers for each organization, and approval signatures from all parties.

**4.3 Existing Work Orders.** All existing work orders will automatically be transferred to Contractor and remain in effect. Work orders can be amended with new terms at any time upon approval of all parties. This contract prevails in the case there is any conflicting terms in existing work orders.

**4.4 Termination.** The Department of Administration may disapprove, or terminate, any work order. If a work order is disapproved or terminated, all associated work must immediately cease and desist. The State acknowledges that the services (including revenue-generating, low-revenue generating, and non-revenue generating) provided by the Contractor under the transaction-funded model contemplated under this Contract are directly tied to the level of financial resources available. The termination of any work order pursuant to this Section 4.4, except for Contractor's breach of a work order, will not be deemed a termination For Cause for purposes of the license granted in Section 13.

## **5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** When work conducted by Contractor is being funded by an agency or program, outside of the transaction fund in consideration for services provided, the ordering agency or program will pay within 30 days of receipt of a properly executed invoice. The final payment, plus retainer (if applicable), will be made within 30 days of receipt of a properly executed invoice and upon acceptance of the completed project.

**5.2 Withholding of Payment.** The State may withhold disputed payments to the Contractor for a work order if the Contractor is in material breach of such work order. Such withholding cannot be greater than, in the aggregate, 15% of the total value of the work order. With respect to payments subject to milestone acceptance criteria, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. The Contractor is not relieved of its performance obligation in the event such payment is withheld.

## **6. TRANSACTION FUND, REVENUE, REMITTANCE**

**6.1 Transaction Fund Defined.** The transaction fund is a contractor account(s) that revenues from the eGovernment services are deposited.

**6.2 Requirements.** The transaction fund must be established as one or more accounts insured by the FDIC in financial institutions. The accounts shall be established as trust accounts with the funds held for the benefit of the State. Contractor shall furnish the Department of Administration with the names of the institutions, the account numbers, and the names of those persons having signatory authority. The accounts must be established in financial institutions licensed in Montana. Exceptions must be approved by both parties. The Contractor is responsible for collecting and administering all revenue from the eGovernment services unless otherwise stated in the work order.

**6.3 Remittance.** The Contractor must follow all of the State's laws and accounting policies as published in the Montana Operations Manual (MOM) for remitting State funds and interfacing with SABHRS (or its successor). Deposits must be made timely and on a one bank

deposit to one and only one SABHRS entry basis. Montana government entities are to be provided the necessary reports to perform reconciliations from the data to the SABHRS transactions. The Contractor collects all funds in the transaction fund and remits the State's funds to the State Treasury. The Contractor is responsible for all funds owed to the State to the extent the same are collected funds. All remaining funds are to be retained by the Contractor.

**6.4 Reconciliation** The Contractor shall submit monthly income statements and balance sheets for the transaction fund to the Department of Administration on a quarterly basis.

**6.5 Transaction Fund Balance.** If for any reason this contract is terminated or not renewed at the end of its term, the Contractor shall remit to the State that portion of the transaction fund owed to the State as soon as the reasonable course of business allows, but not more than 60 days.

## **7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor, or their authorized agents access to any records required to be made available by 18-1-118 MCA, in order to determine contract compliance.

**7.2 Retention Period.** The Contractor shall retain Project operating records otherwise required to be retained under this contract for a period of three years after either: (i) the termination date of this contract; or (ii) with regard to those records related to any claim, litigation, or exception relating to this contract taken by the State of Montana or a third party about which the Contractor has actual knowledge, the conclusion or final resolution of any such claim, litigation or exception.

## **8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA)

## **9. LIMITATION OF LIABILITY**

The Contractor's liability for contract damages is limited to direct damages and further to no more than twice the contract amount. The Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount of damages.

## **10. REQUIRED INSURANCE**

**10.1 General Requirements.** The Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**10.2 Primary Insurance.** The Contractor's Commercial General Liability insurance coverage with respect to the Contractor's negligence shall be primary insurance with respect to the State, its officers, officials and employees and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, or employees shall be excess of the Contractor's insurance and shall not contribute with it."

**10.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, and employees are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**10.4 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention for the specific insurance coverages mentioned in Section 10.3 must be declared to the state agency. At the request of the agency, the Contractor will elect to either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, or employees; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses."

**10.5 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than B++ indicating compliance with the required coverages, has been received by the Department of Administration. The State reserves the right to require certificates of insurance policies at all times, and such certificates of insurance shall include a provision that coverage may not be cancelled without providing the State with thirty (30) days' prior notice, unless such termination is the result of a nonpayment of premiums, in which case the coverage may be cancelled upon providing the State with ten days' prior notice.

## **11. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of this contract. A renewal document must be sent to the Department of Administration, upon expiration.

## **12. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

## **13. INTELLECTUAL PROPERTY/OWNERSHIP**

**13.1 Definitions.** For purposes of this Section 13 only, the following terms will have the meanings set forth below:

- a. "Affiliates" mean any corporation or other entity controlled by, controlling, or under common control with Contractor.
- b. "Authorized Contractors" means contractors engaged by or on behalf of the State to assist the State in the Permitted Use of the Source Code and Project Software, who have executed a confidentiality agreement that at least includes a confidentiality clause equally protective as Section 13.6, in a form acceptable to Contractor, and that otherwise protects the Source and object code from unauthorized use or disclosure.
- c. "Contract" means this agreement, commencing on January 1, 2011, and terminating on or before 12:00 a.m., January 1, 2016, unless renewed in accordance with the terms of the Contract.
- d. "Electronic Services" means commercial, readily available services provided through hardware, software and network infrastructure hosted by NIC Inc. ("NIC") or another of its subsidiaries, including hardware, software and network infrastructure that enable applications developed by Contractor or any of its affiliates, to authorize and capture credit and debit cards for payments; to process all other forms of electronic funds transfer, process billing and collection of funds, to manage the registration of Users for Project Users of fee services, and manage the online transaction logging data. It includes such other online services as may be from time to time developed by NIC, or another of its subsidiaries, outside of this Contract and made available to the State through Contractor.
- e. "For Use Only" means the right to use application software modules for the Permitted Uses on the Project without the right to sell, distribute, transfer or sublicense such rights.
- f. "Permitted Uses" means use of the functionality of the software hosted on the Project to permit Users to access State information, and to perform certain other transactions agreed upon by the Contractor, the State and/or any State agencies pursuant to the terms of this contract from time to time. The term "Permitted Uses" excludes any commercial sale, licensing or other transfer or use for commercial purposes.

- g. "Project" means the project for increased electronic access to public and other useful and relevant information held, stored and created by State in connection with the services provided under this contract.
- h. "Project Software" means the application software modules created by Contractor during the term of this contract and the previous contract #SPB01-21B and used in the Project, plus related User documentation, and includes any modifications or improvements to the Project Software provided by Contractor for use of the Project under this contract. Project Software does not include software programs and related documentation licensed by Contractor from third parties who are not affiliates of Contractor ("Third Party Software"). For the avoidance of doubt, the term "Project Software" does not include any of the software, data or information hosted by NIC Inc. or its affiliated entities that is used in Electronic Services.
- i. "Source Code" means the source code listings for a computer software program, and required compile instructions. Where the term "software" or "Project Software" is used, such term means software in object code only, unless Source Code is specifically mentioned.
- j. "User" means any person or entity that is authorized or permitted by the State to use or access the Project for Permitted Uses.

**13.2 Ownership.** All State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, Internet addresses and e-mail addresses obtained or developed pursuant to this contract shall be the property of the State. All content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, to Contractor to facilitate Contractor's performance under this contract ("State Materials") shall be and remain the sole property of the State. With the exception of the license rights expressly granted hereunder, all rights, title and interest in the Project Software (including Source Code) in all formats and media, including any modifications, revisions, corrections or enhancements thereto, and including any inventions, discoveries, ideas, methods, concepts, methodologies, models, templates, user interfaces, screen designs, works of authorship, materials, know-how, information, procedures, processes, techniques, tools, designs, routines, utilities, prototypes and data embodied therein, not to include the data of the State that is produced as a result of these hosted services, (the "Intellectual Property") are and shall remain the exclusive property of Contractor or its Affiliates. Any modifications, upgrades and enhancements to the Project Software and Source Code made by the State (under the terms of this Agreement), or their Authorized Contractors which incorporate any code from the Project Software or Source Code or any Intellectual Property constitute derivative works of the Project Software, shall be owned by Contractor and shall be subject to the provisions of this contract applicable to Project Software (excluding any warranty and indemnification obligations of Contractor).

**13.3 Use of Electronic Services.** During the term of this contract, Contractor will provide access to the functionality of the Electronic Services through the Project, for the Permitted Uses. Access to the Electronic Services for Contractor shall terminate upon termination of this contract; provided however, that the State or any subsequent contractor operating the Project may contract for Electronic Services separately and apart from Contractor. The State does not have any rights to have or to make copies or archival copies of any software used in the Electronic Services during the term of the Contract or following its termination or expiration.

#### **13.4 Grant of Perpetual License.**

**a. Upon Termination for Cause, Bankruptcy or Natural Expiration of the Term.**

Following the termination of this contract by the State pursuant to Section 17.1 (Termination for Cause) or Section 17.2 (Bankruptcy or Receivership), or upon the natural expiration of the contract at the end of the term, the Contractor shall grant to the State (for the sole benefit of the State) a perpetual, For Use Only, fully paid-up, non-exclusive, license to host, copy, modify, enhance, use, and execute the Project Software, and a copy of the Source Code for the Project Software, for the Permitted Uses, including the specific rights set forth in Section 13.4(c) (collectively, the "License").

**b. Upon Termination without Cause.** If the contract or any individual work order is terminated for any reason other than those set forth in Section 13.4(a), such termination will be deemed to be "Without Cause" for purposes of this Section 13.4(b). Upon any termination Without Cause, the State may, at its sole option, purchase the License (for the sole benefit of the State) upon the payment of a mutually agreed to license fee.

**c. License Terms.** The License will grant to the State the right to : (i) make copies of the Project Software and Source Code, for archival, testing or back-up purposes, or for development of modifications and enhancements for the Permitted Uses; (ii) modify the Project Software or Source Code as may be required or desirable for the maintenance or enhancement of the Project Software or the Project; (iii) load the Project Software on any State systems for the Permitted Uses; (iv) use State employees or Authorized Contractors to maintain, repair, modify or enhance the Project Software and Source Code for the Permitted Uses; and (v) allow Users access to the functions of the Project Software (but not the Source Code) through the Project solely for Permitted Uses. License rights to Third Party Software used to operate the Project shall be transferred to the State (for the sole benefit of the State) by Contractor at the end of the full term to the extent permissible under the applicable Third Party license terms Contractor shall provide the State with a list of Third Party Software used on the Project and will update this list on an annual basis or at any other reasonable time as specified by the State during the term of the Contract. Such list will also identify whether or not the Third Party Software is transferable to the State. In the event the license is not transferrable to the State, then, at the option of the State, Contractor agrees to leave the Project Software on hardware purchased by the State, remove the Project Software used in the State's eGovernment services from any such hardware not purchased by the State, or to not use such Project Software except in connection with the State's eGovernment Services. The preceding sentence shall not apply to any Project Software group license that extends beyond the State's eGovernment services. Contractor makes no warranties with respect to Third Party Software and other materials, and the only warranties the State receives are the transferable warranties, if any, made by third party licensors and vendors.



### **13.5 Source Code Escrow.**

- a. Contractor shall deposit on a quarterly basis a copy of the Source Code for the most recent version of all Contractor Project Software (excluding Third Party Software) in escrow with a neutral third party to be mutually chosen by Contractor and the State under the terms of an escrow agreement satisfactory to the State, Contractor and the escrow agent. During the Term of this Contract, Contractor will have the authority to remove superseded Source Code. The copy of the Source Code shall be delivered to the State by the Escrow Agent in the event: (i) Contractor is required to deliver Source Code as provided in Section 13.4 above; or (ii) as otherwise provided in the agreement with the Escrow Agent.
- b. Contractor acknowledges that it will deliver a copy of the software escrow agreement between Contractor and its Escrow Agent to the State. Contractor shall obtain the consent of the State in writing to any material amendments to such agreement, any change in Escrow Agent, any replacement, or successor escrow arrangements or termination of the escrow agreement.
- c. The cost of the Source Code escrow shall be borne by Contractor and paid out of the Project's revenues as an operating expense. The State agrees that the copy of the Source Code shall be treated as the Confidential Information of Contractor notwithstanding termination or expiration of this Contract, and that the Source Code may be used only for Permitted Uses for the State Portal.

### **13.6 Confidentiality; Reservation of Rights.**

- a. Reserved Rights. Contractor reserves all rights not expressly licensed to the State under this contract.
- b. Markings; Limitations. Any and all copies of the Project Software, or the Source Code made by the State shall bear Contractor's notice of copyright, and other restrictive legends contained on the Project Software and Source Code provided by Contractor. The State shall have no rights to provide, sell, or distribute copies of the Project Software and Source Code or any derivative works that incorporate any part thereof, to any third parties, including to other State entities, except that if all of the duties of the State are transferred by statute to another State entity, any reference to the State herein shall be automatically read as a reference to the other State entity.
- c. Confidentiality. The State acknowledges on behalf of itself that the Project Software and Source Code, including the Intellectual Property embodied therein, are proprietary confidential information of Contractor or its Affiliates. The State on behalf of itself and the State agrees to take all steps necessary to protect the Project Software and Source Code from unauthorized use or copying, including, but not limited to, obtaining written confidentiality agreements acceptable to Contractor, and instructing its employees with respect to the proprietary nature of the Project Software and Source Code and the restrictions on the use granted hereunder. The State acknowledges on behalf of itself and the State that the Project Software and Source Code, as well as Contractor's Intellectual Property, are not public record. If a request is made to view the Project Software or Source Code, or Contractor's Intellectual Property (other than by an Authorized Contractor) the State will notify

Contractor of the request prior to its release and cooperate with Contractor in obtaining a court order or other protection against disclosure. This obligation shall survive termination or expiration of the contract.

- d. **Disclaimer.** Contractor and its Affiliates and their directors, officers, and employees shall not be liable for any losses, costs, expenses, including reasonable attorney's fees, arising out of or related to the use or modification or enhancement of the Project Software or the Source Code either by the State or any third party, or caused by any modifications or changes performed by State, or at their direction, to the operating platform or environment on which or with which the Project Software or Source Code are operated. Contractor is not responsible to maintain any software following termination or expiration of this contract.

**13.7 Contractor Records.** Contractor retains ownership rights in and to the business and company reports, and the internal business and company records, which are not licensed to the State. Contractor also retains ownership rights to pre-existing designs, User documentation, survey materials, Project operation reports and records and other works of authorship, and any modifications and improvements made to any such materials whether made under this Contract or otherwise ("Contractor Materials"). Contractor shall grant the State a perpetual, non-exclusive, limited license to use and modify Contractor Materials used in the Project, and necessary for the continued operation, maintenance and enhancement of the Project.

#### **14. PATENT AND COPYRIGHT PROTECTION**

**14.1 Third-Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify the Contractor. The Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at the Contractor's expense. The Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. Such indemnification will be conditional upon the following:

- a. The State will promptly notify the Contractor of the claim in writing; and
- b. The State will allow the Contractor to control, and will cooperate with the Contractor in the defense and any related settlement negotiations, provided that:
  - i. the Contractor will permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and
  - ii. the Contractor shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

**14.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes noninfringing or replace it with one that is at least functionally equivalent. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State agrees to return the product to the Contractor on written request. The Contractor will then give the State a credit equal to the amount paid to the Contractor for the creation of the Work Product. The provisions of Sections

14.1 and 14.2 are the Contractor's entire obligation to the State regarding a claim of infringement.

**14.3 Claims for Which Contractor is Not Responsible.** The Contractor has no obligation regarding any claim based on any of the following, except where the Contractor has agreed in writing, either separately or within this contract, to such use that is the basis of the claim:

- a. Anything the State provided which is incorporated into a Work Product except:
  - i. where the Contractor knew (and the State did not know) such thing was infringing at the time of its incorporation into a Work Product but failed to advise the State; or
  - ii. where the claim would have been brought without such incorporation;
- b. The State's modification of a Work Product furnished under this contract;
- c. The use of a Work Product in a manner that could not be reasonably contemplated within the agreed upon scope of the applicable project; or
- d. Infringement by a non-Contractor Work Product alone.

## **15. CONTRACT PERFORMANCE ASSURANCE**

The Contractor must provide contract performance security in the amount of \$500,000.

The contract performance security must be provided by the Contractor in one of the following forms, within 10 working days from the Request for Documents Notice. ONLY THE FOLLOWING TYPES OF SECURITY ARE ACCEPTABLE AND MUST BE IN ORIGINAL FORM. FACSIMILE, ELECTRONIC, OR PHOTOCOPIES ARE NOT ACCEPTABLE. Personal or business checks are not acceptable.

- A sufficient bond from a surety company licensed in Montana with a Best's rating of no less than B++ and supplied on the State of Montana's designated form entitled "Contract Performance Bond," found at <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx>; or
- Lawful money of the United States; or
- An irrevocable letter of credit from a single financial institution and supplied on the State of Montana's designated form entitled "Irrevocable Letter of Credit," found at <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx>; or
- A cashier's check, certified check, bank money order, bank draft, certificate of deposit, or money market certificate drawn, or issued by a federally or state-chartered bank or savings, and loan association that is insured by, or for which insurance is administered by the FDIC, or that is drawn and issued by a credit union insured by the National Credit Union Share Insurance Fund. Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the State. All interest income from these certificates must accrue only to the Contractor and not the State.

See Title 18, chapter 4, part 3, MCA; Title 30, chapter 5, MCA; and ARM 2.5.502.

The contract performance security must remain in effect for the entire term of this contract. A new surety bond or irrevocable letter of credit must be issued to the State of Montana if this contract is renewed.

The contract performance security in the form of a bond has been provided to the Department of Administration.

## **16. CONTRACT OVERSIGHT**

**16.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

**16.2 Right to Assurance.** If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at the State's option, be the basis for terminating this contract under the terms and conditions or other rights and remedies available by law or provided by this contract.

**16.3 Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this contract shall be amended in writing accordingly. If a stop work order issued pursuant to this Section 16.3 extends for a period of time that is longer than six months, the Contractor may deem the stop work order to be a termination of the work order pursuant to Section 4.4.

## **17. CONTRACT TERMINATION**

**17.1 Termination for Cause.** Neither party will terminate this contract for the other party's material breach of the contract without first delivering written notice to the other party of the Event of Breach and a 30-day period after the other party's receipt of the notice for the breaching party to attempt to cure or otherwise remedy the Event of Breach.

**17.2 Bankruptcy or Receivership.** Voluntary or involuntary bankruptcy or receivership by the Contractor may be cause for termination.

**17.3 Noncompliance with Department of Administration Requirements.** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for products and services delivered to date and any applicable termination fee specified in a work order. Any modifications to this contract must be mutually agreed to by the parties

**17.4 Reduction of Funding.** The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

**17.5 Hardware and Infrastructure.** Upon termination, the State has the right to purchase all hardware and any infrastructure supporting this contract at fair market value. This includes any software that may be transferrable to the State.

**18. EVENT OF BREACH.** Any failure of the either party or its affiliates, agents and authorized subcontractors to materially comply with any of the terms and conditions of this contract will be deemed to be an "Event of Breach." If an Event of Breach occurs the non-breaching party may pursue any remedies available to it in law or in equity, or both.

**19. WAIVER OF BREACH**

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of either party to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

**20. STATE PERSONNEL**

**20.1 State Contract Manager.** The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints, or any other issues regarding this contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Audrey Hinman, Bureau Chief  
Application Technology Services Bureau  
State Information Technology Services Division  
P.O. Box 200113  
Helena, MT 59620-0113  
Telephone: 406-444-1635  
FAX: (406) 444-2701  
E-mail: [ahinman@mt.gov](mailto:ahinman@mt.gov)

**20.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Audrey Hinman, Bureau Chief  
Application Technology Services Bureau  
State Information Technology Services Division  
P.O. Box 200113

Helena, MT 59620-0113  
Telephone: 406-444-1635  
FAX: (406) 444-2701  
E-mail: [ahinman@mt.gov](mailto:ahinman@mt.gov)

## **21. CONTRACTOR PERSONNEL**

**21.1 Identification/Substitution of Personnel.** Contractor's key personnel shall not be reassigned by Contractor during the term of this contract without the prior written approval of the State unless (i) Contractor believes in good faith that such a reassignment is necessary or favorable to the State, or (ii) such reassignment is a result of disciplinary action, or necessary for the Contractor's compliance with its internal policies, (for example, family medical leave), or (iii) due to a promotion within the Contractor or its affiliates. Contractor will use commercially reasonable efforts to replace any such key personnel with individuals with qualifications that are as good or better as the individual being replaced.

**21.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Sandi Miller  
General Manager  
101 N Rodney, Ste 3  
Helena, MT 59601  
Telephone: (406) 449-3468 xt 227  
Fax: (406) 495-0464  
E-mail: [sandi@egovmt.com](mailto:sandi@egovmt.com)

**21.3 Security.** Contractor employees may be given access to secured facilities and data. Prior to having access to secured facilities and data, employees must submit to the same level of scrutiny as state employees and be approved by the State for access. Contractor's employees, in carrying out this project, must follow all applicable laws, State procedures and State policies.

## **22. MEETINGS AND REPORTS**

**22.1 Technical or Contractual Problems.** Each party is required to meet with the other to resolve technical or contractual problems that may occur during the term of this contract. Meetings will occur as problems arise and will be coordinated by the State. Contractor will be given a minimum of three (3) full working days notice of meeting date, time, and location. Face to face meetings are desired. However, upon mutual agreement, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings (two (2) consecutive missed or rescheduled meetings), or failure to make a good faith effort to resolve problems (as determined by the State), may result in termination of this contract.

**22.2 Progress Meetings.** During the term of this contract, the State's Project Manager will plan and schedule weekly progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each such meeting, the Contractor shall provide the State with a status report that identifies any problem or circumstance encountered by the Contractor, or of which the Contractor gained knowledge during the period since the last such status report, on any active work orders. The report will include the problem or circumstance and the steps taken to remedy the same. These weekly progress meetings will also be used to mutually agree to the priority of work orders and the development schedule for all outstanding work orders separated by new active projects, enhancements to existing services, and pending work orders.

**22.3 Failure to Notify.** In the event the Contractor fails to specify in writing any problem or circumstance that materially impacts the costs of its delivery hereunder, including a material breach by the State, about which the Contractor knew or reasonably should have known with respect to the period during the term covered by the Contractor's status report, the Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope; provided, however, that the Contractor shall be relieved of its performance obligations to the extent the acts or omissions of the State prevent such performance.

**22.4 State's Failure or Delay.** For a problem or circumstance identified in the Contractor's status report in which the Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by the Contractor. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

**22.5 Reporting.** Financial reports are due quarterly with year to date accumulations. Reports are to be distributed to the State Project Manager and to the Electronic Government Advisory Council. Contractor must include income statements and balance sheets, work orders in progress and completed, an estimate of development and maintenance costs, web analytics and trends, and other information as requested by the Department. Some of the expected information can be found in Attachment A. Contractor must provide reports as needed to comply with government accounting disclosure requirements. Contractor must provide the Department of Administration a current disaster recovery plan for the hosting environment and the State Payment Portal no less than annually. Contractor must also provide a continuity of operations/continuity of government plan no less than annually.

## **23. CONTRACTOR PERFORMANCE ASSESSMENTS**

**23.1 Assessments.** The State may conduct assessments of the Contractor's performance. The Contractor will have an opportunity to respond to assessments, and independent verification of the assessment by a third party without a prior material relationship with either party may be utilized in the case of disagreement.

**23.2 Record.** Completed assessments may be kept on record at the State's Information Technology Services Division and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## **24. TRANSITION ASSISTANCE**

**24.1 Termination Requirements.** If this contract is not renewed at the end of its term, or is terminated, the Contractor must for a period of 12 months time after the expiration or termination of this contract, to continue to operate under this contract in accordance with all its terms and conditions, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of all eGovernment services and infrastructure to the State or its designees. The intent of this provision is to insure continuation of eGovernment services while a successor (which may be the State) is chosen and installed. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The Contractor will be compensated for all services during the transition period as mutually agreed upon by the parties. If the parties cannot agree on compensation, Contractor is still bound to provide services until an agreement is reached. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

**24.2 Infrastructure Option.** If for any reason this contract is terminated or expires the Department of Administration has the option of purchasing the hardware and equipment owned and operated by the Contractor in the performance of its obligations under this contract at fair market value. If Contractor engages in any lease agreements for equipment provided under this contract, the Contractor will use good faith efforts to negotiate a clause allowing it to assign the lease to the State upon termination of the contract. Upon termination, NIC will make reasonable efforts to ensure that the Department shall have necessary access to all equipment and software provided to fulfill this contract in order to support the Department's work as well as the agencies' work.

## **25. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

## **26. AUDIT REQUIREMENTS**

**26.1 Independent Audit.** With the approval of the Department of Administration, Contractor shall select an independent auditor to audit, at its own expense, Contractor's books and records, including the transaction fund books and records, on an annual basis during the term of the contract. Contractor shall make such books and records available at its principal place of business or corporate headquarters, as applicable. Contractor will provide the Department annual audited financial statements, including final audit comments issued by auditor to management regarding any material weaknesses and significant deficiencies pertaining to the Contractor within one hundred twenty (120) days after the end of Contractor's



fiscal year, demonstrating that Contractor has maintained positive net worth and such additional capital and liquidity as are reasonably adequate for the performance of Contractor's obligations under this contract. In addition, Contractor is subject to any further audit and review determined necessary, after furnishing reasonable notice to Contractor, along with the scope and relevant time period of the audit. This includes audits conducted by the Legislative Auditor.

**26.2 Discrepancies.** To the extent an audit report discloses any discrepancies in charges, billings, or financial records, and following a period for review and verification of the amount by Contractor, Contractor will adjust the discrepancy as soon as reasonably possible, but not to exceed 90 days. Contractor shall cooperate to assure that verification is completed in a timely manner. Contractor also agrees to make other changes requested by the State that are agreed to by Contractor, to comply with recommendations resulting from any audit.

## **27. SCOPE, AMENDMENT, AND INTERPRETATION**

**27.1 Contract.** This contract consists of 19 numbered pages, any Attachments as required, RFP # 10-1923D, as amended, and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is as follows: 1) amendments to this contract, 2) this contract, 3) the of work order, 4) RFP # 10-1923D, as amended, and 5) the Contractor's RFP response, as amended.

**27.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

## **28. POLITICAL SUBDIVISIONS**

This contract will be offered to all public procurement units, as defined in section 18-4-401, MCA, that have the option of cooperatively purchasing with the State of Montana. At no time shall services be provided to political subdivisions to the detriment of the State. The State makes no guarantee of any public procurement unit participation in this contract.

## **29. EXECUTION**

Execution follows on the next page.

The parties through their authorized agents have executed this contract on the dates set out below.

Department of Administration,  
State Information Technology Services  
Division,  
PO Box 200113  
Helena, MT, 59620-0113

Montana Interactive  
101 North Rodney Suite 3  
Helena, MT 59601

BY: Dick Clark, CIO

BY: Sandi Miller, General Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Legal Content:

\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form:

\_\_\_\_\_  
Procurement Officer (Date)

State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

\_\_\_\_\_  
Dick Clark, Chief Information Officer (Date)  
Department of Administration

<p align="center"><b>Information Technology Contract</b>  <b>Attachment A</b>  <b>Page 1</b></p>
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**CONSOLIDATED FINANCIAL REPORT**

-Unaudited report-

**INCOME STATEMENT**  
**MONTANA**  
**INTERACTIVE**  
xx/xx/xxxx-xx/xx/xxxx

Operating revenues:		
Operating revenue	\$	x
Interest Income		x
<b>Total Revenues:</b>		<b>x</b>
Costs of Revenues:		
Remittance to the state		x
<b>Total Cost of Revenues</b>		<b>x</b>
Net Revenue:	\$	x
<i>Credit/debit card &amp; merchant</i>		
<i>bank fees</i>		x
<i>Infrastructure and</i>		
<i>communications costs</i>		x
<i>Operating expenses</i>		<u>x</u>
		-
Total Operating expenses		x
Operating income (loss)		x
		-
Provision for tax		x
<b>Net Income (Loss)</b>	<b>\$</b>	<b>x</b>

<p style="text-align: center;"><b>Information Technology Contract</b>  <b>Attachment A</b>  <b>page 2</b></p>
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**STATEMENT OF NET ASSETS or BALANCE SHEET**  
**XXXXXX (financial statement date)**

**ASSETS**

Current assets:

Cash/cash equivalents	\$	xx
Receivables (net)		xx
Other current assets		xx
Total current assets		xx

Noncurrent assets:

Long-term investments		-
Capital assets:		
Buildings/improvements		-
Equipment		xx
Intangible assets		-
Less accumulated depreciation		-xx
Total capital assets		xx
Total noncurrent assets		xx
Total assets		xx

**LIABILITIES**

Current liabilities:

Accounts payable		xx
Estimated insurance claims		-
Compensated absences payable		x
Total current liabilities		xxx

Noncurrent liabilities:

Lease/installment purchase payable		-
Estimated insurance claims		-
Compensated absences payable		-
Total noncurrent liabilities		-
Total liabilities		xxxx

**NET ASSETS**

Invested in capital assets, net of related debt		xx
Unrestricted		xx
Total net assets	\$	xx